



Andrew B. Brown  
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September 2, 2020

Christopher Lawrence  
U.S. Department of Energy  
Office of Electric Delivery and Energy Reliability  
OE-20, Room 8G-017  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

RE: Application of Clear Power LLC for Authority to Transmit Electric Energy to Mexico, Docket No. EA- \_\_\_\_\_ .

Enclosed for filing is a scanned original of the Application of Clear Power LLC for Authorization to Transmit Electricity from the United States to Mexico and, as required by 10 C.F.R. § 205.309, and per payment instructions provided by you, a copy of the receipt of the \$500 filing fee paid to DOE by an Electronic Credit Card Payment via Pay.gov. Two copies of the scanned original will be sent by mail to you at the address above and, pursuant to 10 C.F.R. § 205.309, a copy of the Application will be filed with the Federal Energy Regulatory Commission.

Respectfully submitted,

By: \_\_\_\_\_

Andrew B. Brown  
Ellison Schneider Harris & Donlan LLP  
2600 Capitol Avenue, Suite 400  
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*Counsel for Clear Power LLC*

cc: The Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission

Enclosures.

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF ELECTRICITY DELIVERY AND RELIABILITY**

CLEAR POWER LLC

)  
) Docket No. EA- \_\_\_\_\_  
)

**APPLICATION OF CLEAR POWER LLC  
FOR AUTHORITY TO TRANSMIT ELECTRIC ENERGY TO MEXICO**

Pursuant to Section 202(e) of the Federal Power Act (“FPA”)<sup>1</sup> and the regulations promulgated under 10 C.F.R. §§ 205.300, *et seq.*, Clear Power LLC (“Clear Power” or “Applicant”) hereby submits this application to the Department of Energy, Office of Electricity Delivery and Energy Reliability (“Department”) for, and respectfully requests, blanket authorization to transmit and export electricity from the United States to Mexico (“Application”) for a period of five (5) years, or the maximum period allowed by the Department.

**I. DESCRIPTION OF APPLICANT**

The legal name of the Applicant is Clear Power LLC. Applicant is a California limited liability corporation with its principal place of business located at 604 Sutter Street, Suite 250, Folsom, CA 95630. Clear Power is a wholly-owned subsidiary of the Alaywan Trust which owns or is affiliated with entities that own or control a combined total of 11.0 MW (nameplate) of operating renewable generation facilities, all located in the CAISO market.

Clear Power’s sole business is to provide energy services. Clear Power intends to participate in the energy markets in the United States, including, without limitation, by purchasing wholesale electric energy, capacity and ancillary services at market-based rates for resale to Mexico.<sup>2</sup> Clear Power will make these wholesale purchases in the Electricity Reliability Council of Texas (“ERCOT”) and the California Independent System Operator

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<sup>1</sup> 16 U.S.C. § 824(e).

<sup>2</sup> On August 12, 2020, in docket ER20-2654-000, Clear Power applied to the Federal Energy Regulatory Commission (“FERC”) for authority to sell wholesale electric energy, capacity and ancillary services in the Northwest region, the Southwest region and in the CAISO market, with an effective date of September 1, 2020.

(“CAISO”); and may also engage in such transactions in other geographic regions and energy markets in the United States, including without limitation, in the Arizona, New Mexico, Southern Nevada Power Area (“AZ/NM/SNV”) and the Rocky Mountain Power Area (“RMPA”). Clear Power has not previously sought authorization to export, nor has it exported, electricity to Mexico.

Clear Power does not own or control any electric power generation, transmission or distribution facilities. In addition, Clear Power does not have a franchised service area and has not entered into any contracts that confer ownership or control over generation capacity to Clear Power. Clear Power is ultimately responsible for all electricity trading undertaken by itself and is ultimately responsible for compliance with all applicable laws, regulations, and market rules.

## **II. COMMUNICATIONS AND CORRESPONDENCE**

Communications and correspondence concerning this Application should be addressed to the following:

Ziad Alaywan  
President & CEO  
Clear Power LLC  
604 Sutter Street, Suite 250  
Folsom, CA 95630  
Phone: (916) 985-9461  
E-Mail: [ziad@zgloab.biz](mailto:ziad@zgloab.biz)

Andrew B. Brown  
Ronald Liebert  
Ellison Schneider Harris & Donlan LLP  
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E-Mail: [rl@eslawfirm.com](mailto:rl@eslawfirm.com)

*Counsel for Clear Power LLC*

## **III. JURISDICTION**

Under Section 202(e) of the FPA and the Department’s regulations, 10 C.F.R. §§ 205.300, *et seq.*, the Department has jurisdiction over the action proposed in this Application. No other known federal, state or local government has jurisdiction over the actions to be taken under the authority described in this Application.

#### **IV. DESCRIPTION OF TRANSMISSION FACILITIES**

Clear Power requests authority to export electric energy to Mexico over any international transmission facility authorized by Presidential Permit that is appropriate for open access by third parties in accordance with export limits assessed and authorized by the Department. Clear Power intends and requests to export electric energy over the existing international transmission facilities between Mexico and the United States, as identified in Exhibit C. Exhibit C provides the owner name, location, voltage description, and Presidential Permit number of these existing international transmission facilities.

#### **V. TECHNICAL DISCUSSION OF PROPOSAL**

Section 202(e) of the FPA and the Department's regulations promulgated thereunder provide that exports of electric energy should be authorized unless the proposed export would impair the sufficiency of electric power supply within the United States or would impede or tend to impede the coordinated use (from an operational reliability and security perspective) of the United States electric transmission system.<sup>3</sup>

Clear Power will act as a power marketer that does not own or control electric generation facilities or transmission facilities. Clear Power does not own or control a transmission or power supply system on which its proposed exports of power could have a reliability, fuel use or system stability impact. Nor does Clear Power have an obligation to serve native load within a franchised service area.

Clear Power will purchase the power it plans to export voluntarily through the electric energy markets in the United States (*e.g.*, ERCOT, CAISO, AZ/NM/SNV and RMPA) and/or from electric utilities, wholesale generators, power marketers and other parties, and thus such power will be surplus to the needs of the selling parties or organization. Clear Power's export of power will not impair or tend to impede the sufficiency of electric power supplies in the United States or the regional coordination of electric utility planning or operation.

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<sup>3</sup> See 16 U.S.C § 824(e); 10 C.F.R. §§ 205.300, *et seq.* (2018); *see, e.g.*, BP Energy Co., Order No. EA-314, at 2 (Feb. 22, 2007), *renewed*, Order No. EA-314-A, at 2 (May 3, 2012).

Clear Power will make all necessary commercial arrangements and will obtain all other regulatory approvals required to carry out any power exports. This will include: (i) scheduling each transaction with the appropriate balancing authority area in compliance with all reliability criteria, standards and guidelines of the North American Reliability Corporation (“NERC”) and applicable Regional Entities in effect at the time of the export, and (ii) obtaining all necessary transmission access over the existing transmission facilities listed in Exhibit C, including, complying with procedures for obtaining such transmission capacity from unaffiliated third parties. Clear Power agrees to comply with the export limits contained in the relevant export authorization and Presidential Permit associated with the transmission facilities over which Clear Power exports electric power to Mexico.

In prior Department orders granting export authorization to electric power marketers, the Department declined to rigidly apply the information filing requirements contained in its regulations and instead used a flexible approach which takes into consideration the unique nature of power marketers, the requirements of FERC Order No. 888<sup>4</sup> and previously authorized export limits of cross-border facilities.<sup>5</sup> These same considerations demonstrate that the exports proposed by Clear Power will not impair or tend to impede the sufficiency of electric supplies in the United States or the regional coordination of electric utility planning or operations.

## **VI. COMPLIANCE WITH LAWS AND CONDITIONS**

Clear Power will conduct its operations (i) in compliance with any authorization conditions imposed by the Department consistent with its prior orders authorizing power marketers’ blanket authority to export power and (ii) in accordance with the provisions of the FPA and applicable rules, regulations and orders adopted or issued thereunder. Clear Power also will conduct its operations in conformity with the applicable reliability criteria, standards and

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<sup>4</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 1991-1996 FERC Stats. & Regs., Regs. Preambles ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, 1996-20000 FERC Stats. & Regs., Regs. Preambles ¶ 31,048, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *reh’g denied*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in part and remanded in part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>5</sup> See e.g., *Morgan Stanley Capital Power Grp. Inc.* Order No. EA-185-A-CN (Aug. 14, 2000); *Saracen Energy Partners, LP*, Order No. EA-340 (June 18, 2008).

guidelines of NERC, reliability coordinators and balancing authority area operators, including any applicable regional transmission organizations or independent system operators. If required by the Department, Clear Power' exports of power will not exceed the export limits for the transmission facilities used by Clear Power, or otherwise cause a violation of the terms and conditions established in the export authorization. Clear Power will provide the Department with evidence that it has secured sufficient transmission services for the delivery of power and with all periodic reports regarding exports of power, as may be applicable or required.

Clear Power respectfully submits that the Application qualifies for a categorical exclusion under the National Environmental Policy Act of 1969 such that neither an Environmental Agreement nor an Environmental Impact Statement is required because the exports of power proposed by Clear Power will occur over existing transmission lines.<sup>6</sup>

## **VII. VERIFICATION, REQUIRED COPIES AND FEE**

The verification executed by Clear Power's authorized representative in accordance with 10 C.F.R. § 205.302(h) is enclosed with the Application. In accordance with the requirements of 10 C.F.R. § 205.307, an original and two (2) copies of the Application are being provided to the Department. In accordance with the requirements of 10 C.F.R. § 205.309, a copy of this Application will be provided to the Secretary of the Federal Energy Regulatory Commission at the following address:

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

An Electronic Credit Card Payment in the amount of \$500.00, as specified in 10 C.F.R. § 205.309, was made to DOE by an Electronic Credit Card Payment via Pay.gov.

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<sup>6</sup> See 10 C.F.R. § 1021.410; 10 C.F.R. pt. 1021, App. B to Subpart D, § B4.2; see, e.g., *Morgan Stanley Capital Grp. Inc.*, Order No. EA-185-D, at 8 (July 8, 2015).

## VIII. REQUIRED EXHIBITS

In accordance with the requirements of the Department's regulations (10 C.F.R. § 205.303), the following applicable exhibits are attached to this Application:

Exhibit A	Transmission Agreements	Not Applicable
Exhibit B	Opinion of Counsel	Attached
Exhibit C	Transmission Facilities	List of international transmission facilities submitted in lieu of a map
Exhibit D	Designation of Agent	Not Applicable
Exhibit E	Statement of Corporate Relationship or Contract	Not Applicable
Exhibit F	Operating Procedures	Not Applicable

To the extent necessary, Clear Power requests a waiver of the requirement to provide the exhibits that are not applicable to this Application, as noted above.

## IX. CONCLUSION

WHEREFORE, Clear Power respectfully requests that the Department grant this Application for blanket authorization to export power from the United States to Mexico, for a period of five (5) years, or the maximum period allowed by the Department.

Respectfully Submitted,

By: 

Andrew B. Brown  
Ellison Schneider Harris & Donlan LLP  
2600 Capital Avenue, Suite 400  
Sacramento, CA 95816  
E-Mail: [abb@eslawfirm.com](mailto:abb@eslawfirm.com)

*Counsel for Clear Power LLC*

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY**

Clear Power LLC

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)  
)

Docket No. EA-\_\_\_\_\_

**VERIFICATION**

I, Ziad Alaywan, Managing Member of Clear Power LLC ("Clear Power"), am authorized to provide this verification on behalf of Clear Power, have knowledge of the matters set forth in the foregoing Application of Clear Power for Authority to Transmit Electric Energy to Mexico, and hereby verify that the contents thereof are true and correct to the best of my knowledge, information and belief.

  
Ziad Alaywan  
Managing Member



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

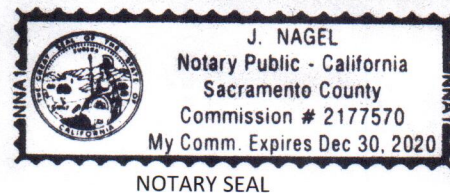
STATE OF CALIFORNIA                }  
   } ss.  
 COUNTY OF SACRAMENTO        }

On August 25, 2020, before me, J. Nagel, a notary public in and for the State of California, personally appeared Ziad Alaywan, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
 NOTARY SIGNATURE



**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of attached document**

Title or Type of Document: FERC Verification  
 Document Date: August 25, 2020 Number of Pages: 1  
 Signer(s) Other Than Named Above: Not Applicable

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Ziad Alaywan  
☐ Corporate Officer – Title(s) \_\_\_\_\_  
☐ Partner - ☐ Limited      ☐ General  
☐ Individual                      ☐ Attorney in Fact  
☐ Trustee                              ☐ Guardian or Conservator  
☒ Other: Managing Member  
 Signer Is Representing: Clear Power LLC

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer – Title(s) \_\_\_\_\_  
☐ Partner - ☐ Limited      ☐ General  
☐ Individual                      ☐ Attorney in Fact  
☐ Trustee                              ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

## **EXHIBIT A- TRANSMISSION AGREEMENTS**

*Not Applicable*

Exhibit A

## **EXHIBIT B - OPINION OF COUNSEL**

*See Attached*

Exhibit B

September 2, 2020

The United States Department of Energy  
Attention: Mr. Christopher Lawrence  
Office of Electricity  
OE-20, Room 8G-017  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Ladies and Gentlemen:

Ellison Schneider Harris & Donlan LLP (the “Firm”) has acted as special legal counsel to Clear Power LLC (“Clear Power”), a California corporation, for the purpose of delivering this Opinion Letter in connection with the Application of Clear Power for Authority to Transmit Electric Energy to Mexico (the “Application”) submitted to the U.S. Department of Energy (the “DOE”). This Opinion Letter is provided in connection with the Application as required by 10 C.F.R. §205.303(b).

This Opinion Letter is rendered only to you and is solely for your benefit in connection with the Application. This Opinion Letter may not be relied upon by you for any other purpose; nor may it be quoted, circulated, referred to or delivered to or relied upon by any other person, firm or entity for any purpose without our prior express written consent.

Clear Power is proposing to export electricity to Mexico. The Firm has been engaged by Clear Power to provide an Opinion Letter regarding Clear Power intent to comply with pertinent federal and state laws.

**A. Limitations and Exclusions.** This Opinion Letter is subject to the following limitations and exclusions:

- (1) It is limited in scope to the material federal permits, registrations, notifications, certifications and other regulatory approvals that are necessary pursuant to any law, rule regulation, order or other instrument known to the Firm and which are required of Clear Power to export electricity to Mexico. We did not examine, and this Opinion Letter specifically excludes from coverage, any other federal, state, and local permits, registrations, notifications, certifications, governmental approvals or regulatory authorizations that Clear Power may be required to obtain;

- (2) It specifically excludes from coverage all approvals required to be obtained by or from the owners or operators of the transmission facilities and interconnecting utilities;
- (3) Any ongoing reporting requirements arising after Clear Power commences the export of electricity to Mexico, such as those typically detailed in agency permits and rules (e.g., self-reporting, record keeping, and permit renewals), are also excluded;
- (4) Future changes in applicable laws, regulations and programs, or in their implementation, may require approvals different from or in addition to those discussed herein. Future legal requirements are beyond the scope of this Opinion Letter and excluded from coverage; and
- (5) It is based solely on the actual present knowledge of the attorneys in the Firm who are directly involved in the representation of Clear Power and the Officer's Certificate of Clear Power attached to this Opinion Letter.

**B. Reliance.** With respect to the factual and technical matters arising in connection with our examination of the Application and relevant to the opinion expressed herein, the Firm has assumed the truth and veracity of the representations, certifications and documents provided by Clear Power without independent investigation, verification or analysis, including without limitation the following documents, which we have examined and with which we are familiar:

- (1) The Clear Power's Officer's Certificate, attached to this Opinion Letter; and
- (2) The Application to which this Opinion Letter is attached as Exhibit B.

**C. Assumptions.** In preparing this Opinion Letter, the Firm has assumed the following:

- (1) The authenticity of original documents and the genuineness of all signatures;
- (2) The conformity to the originals of all documents submitted to the Firm as copies;
- (3) The due authorization, execution, and delivery of documents on behalf of the parties to such documents and the legal, valid, and binding effect of such documents on the parties;
- (4) The absence of any extrinsic evidence that the parties to a document intended a meaning contrary to that expressed by the provisions of the document; and
- (5) The truth and accuracy of all statements and certifications made by Clear Power and by any person on behalf of Clear Power, and of all documents and other factual and technical matters furnished by Clear Power or on behalf of Clear Power, and that none of such entities or persons have made, and that

none of such documents or other factual and technical matters contain, an untrue statement of any material fact or omit a material fact necessary to make such statements or certifications, in light of the circumstances in which they were made, not misleading.

- D. Opinion.** Based upon and subject to the foregoing, and the other limitations and qualifications set forth herein, the Firm is of the opinion that to the best of our knowledge, Clear Power intends to comply with all applicable and pertinent federal and state laws regarding the exportation of electric energy from the United States to Mexico and the matters contemplated in the Application.

Respectfully submitted,

By: \_\_\_\_\_

Andrew B. Brown  
Ellison Schneider Harris & Donlan LLP  
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Sacramento, CA 95816  
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*Attorneys for Counsel for Clear Power LLC*

## Clear Power LLC

### OFFICER'S CERTIFICATE

This Clear Power LLC Officer's Certificate ("Certificate") is being delivered to Ellison Schneider Harris & Donlan, LLP (the "Firm") for reliance hereon by the Firm in rendering their opinion letter to which this Certificate is annexed (the "Opinion Letter"). The undersigned understands, acknowledges and agrees that the facts set forth in the Opinion Letter and this Certificate are being relied upon by the Firm in rendering the Opinion Letter and by each addressee thereof and other parties to the Application to which the Opinion Letter relates. Capitalized terms not defined herein have the meanings assigned to them in the Opinion Letter and the Application. The undersigned hereby represents, warrants, covenants and certifies, after reasonable investigation and review and consultation as appropriate with its attorneys and independent accountants, as follows:

1. Clear Power LLC ("Clear Power") intends to comply with all applicable and pertinent (i) rules and regulations of the ERCOT and CAISO and any other organized energy markets in the United States (*e.g.* AZ/NM/SNV and RMPA), and (ii) federal laws, rules and regulations, including those under the Federal Power Act and implemented by the North American Reliability Corporation and its regional entities and by the U.S. Department of Energy in connection with the exportation of electric energy from the United States to Mexico.
2. Clear Power intends to comply with all applicable and pertinent state laws, rules and regulations, including those of the States of Texas and California.
3. Clear Power has applied to the Federal Energy Regulatory Commission for authority to sell wholesale electric energy, capacity and ancillary services in the Northwest region, the Southwest region and in the CAISO market.
4. Clear Power is a limited liability company, in good standing in the State of California.

As of the date of the Opinion Letter, I, Ziad Alaywan, Managing Member of Clear Power LLC, am authorized to provide this Certificate of Clear Power, have knowledge of the matters set forth in the foregoing Certificate, and hereby verify that the contents thereof are true and correct to the best of my knowledge, information and belief.

Clear Power LLC



By: Ziad Alaywan  
Title: Managing Member







## EXHIBIT C

### International Transmission Facilities Located At the U.S. - Mexico Border Authorized for Third-Party Use and Appropriate for Export

<u>Present Owner</u>	<u>Location</u>	<u>Voltage</u>	<u>Presidential Permit No.<sup>1</sup></u>
Comisión Federal de Electricidad	Falcon Dam, TX	138kV	N/A <sup>2</sup>
	Redford, TX	7.2kV	PP-51
	Presidio, TX	13.8 kV	PP-03
Baja California Power, Inc.	Imperial Valley, CA	230kV	PP-234
Generadora del Desierto - WAPA	San Luis, AZ	230kV	PP-304 <sup>3</sup>
AEP Texas Central Company	Brownsville, TX	138kV	PP-425
	Brownsville, TX	69kV	PP-425
	Laredo, TX	138kV	PP-423
	Laredo, TX	230kV	PP-423
	Eagle Pass, TX	138kV	PP-424
El Paso Electric Company	Diablo, NM	115 kV	PP-98
	Ascarate, TX	115 kV	PP-48
San Diego Gas & Electric	Miguel, CA	230kV	PP-68
	Imperial Valley, CA	230kV	PP-79
Sharyland Utilities	McAllen, TX	138kV	PP-285
Nogales Transmission	Nogales, AZ	230kV	PP-420 <sup>4</sup>

<sup>1</sup> These Presidential permit numbers refer to the generic DOE permit number and are intended to include any subsequent amendments to the permit authorizing the facility.

<sup>2</sup> The international transmission facilities consisting of a 138 kV line at falcon Dam in Falcon Heights, Texas, were authorized by the treaty between the United States and Mexico titled, "Utilization of Waters of Colorado and Tijuana Rivers and of the Rio Grande," signed February 3, 1944, and are open for access transmission.

<sup>3</sup> These transmission facilities have been authorized but not yet constructed or placed into operation.

<sup>4</sup> These transmission facilities have been authorized but not yet constructed or placed into operation.

**EXHIBIT D - DESIGNATION OF AGENT AND POWER OF ATTORNEY**

*Not Applicable*

Exhibit D

**EXHIBIT E - STATEMENT OF ANY CORPORATE RELATIONSHIP  
OR EXISTING CONTRACT**

*Not Applicable*

Exhibit E

## **EXHIBIT F - OPERATING PROCEDURES**

*Not Applicable*

Exhibit F